

**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TENNESSEE**

JOSHUA VOWELL )  
Plaintiff, )  
v. ) Case No. 1:23-cv-1088  
SHELTER MUTUAL INSURANCE ) JURY DEMAND  
COMPANY and JOHN PRICE )  
Defendants. )

**NOTICE OF REMOVAL**

Comes now the Defendant, Shelter Mutual Insurance Company ("Shelter"), by and through counsel, pursuant to 28 U.S.C. § 1441 and, 28 U.S.C. § 1332 and hereby gives notice of removal from the Circuit Court of Madison County, Tennessee, to the United States District Court for the Western District of Tennessee, Eastern Division at Jackson, alleging as follows:

1. On March 31, 2023, the Plaintiff, Joshua Vowell, filed suit against Shelter in the Circuit Court for Madison County, Tennessee, where said action is now pending under Case No. CT-23-83.
2. On April 13, 2023, Shelter was improperly served with a summons and a copy of the complaint via counsel for Shelter, who is not an authorized agent to accept service under the Tennessee Rules of Civil Procedure. A copy of the summons and complaint is attached as Exhibit 1.
3. No further proceedings have been had at the Circuit Court of Madison County, Tennessee.

4. Defendant John Price is an insurance adjuster for Shelter, and all the claims raised against him in the Complaint stem from his action during the course and scope of his employment as an insurance adjuster for Shelter. This Court in Sainaam Inc. v. Am. Nat'l Prop. & Cas. Co., confirmed that "it is well-settled in Tennessee that an insurance agent is not personally liable on an insurance contract formed while the agent was acting within the scope of the agency relationship, and, as here, the contracting parties understood that the agent was acting on behalf of a principal insurance company." No. 08-1149, 2008 U.S. Dist. LEXIS 70071, at 10-12 (W.D. Tenn., 2008) (citing Holt v. American Progressive Life Ins. Co., 731 S.W.2d at 925 (Tenn. Ct. App. 1987)). A party is fraudulently joined when "no colorable cause of action" exists against it. Faith Deliverance Ctr. v. S. Mut. Church Ins. Co., No. 14-1183, 2014 U.S. Dist. LEXIS 187546, at 5 (W.D. Tenn., 2014). Though he is a citizen of Tennessee, Plaintiff has fraudulently joined Defendant Price in attempts to circumnavigate jurisdiction of this Court.

5. This lawsuit involves the purported liability on the part of Shelter, and the other fraudulently joined defendant, John Price under a policy of insurance issued to plaintiff. Plaintiff contends that Shelter has breached the policy in not complying with the appraisal provision and by not paid all benefits due and owing under the policy. Plaintiff also seeks damages pursuant to Tennessee Code Annotated §56-7-103, pre-judgment and post-judgment interest, and attorney's fees. The amounts sought by plaintiffs against Defendants is "no less than three million dollars and punitive damages no less than five million dollars."

6. Jurisdiction exists pursuant to this Court's diversity jurisdiction under 28 U.S.C. § 1332 as the properly joined Defendant, Shelter, is a citizen of Missouri and the Plaintiff is a citizen of Tennessee, and the amount in controversy exceeds the Seventy-Five

Thousand Dollars (\$75,000.00) exclusive of interest and costs. Therefore, removal of this Court and Division is proper, pursuant to 28 U.S.C. § 1441.

Wherefore, Shelter hereby removes the above-captioned case from the Circuit Court of Madison County, Tennessee, to the United States District Court for the Western District of Tennessee, Eastern Division at Jackson as provided by law, and will proceed with this action as if it has been originally commenced in this Court.

Respectfully submitted,

/s E. Jason Ferrell  
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Attorneys for Shelter Mutual Insurance Company

**CERTIFICATE OF SERVICE**

I hereby certify that on this 15th day of May, 2023, a true and correct copy of the foregoing has been sent, via first-class mail, postage prepaid to:

Drayton Berkley, Esq.  
The Berkley Law Firm, PLLC  
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Attorney for Plaintiff

/s E. Jason Ferrell  
**E. JASON FERRELL**